

# **Procedures for Resolution of Complaints Under Cornell University Student Code of Conduct**

**Approved by the Board 12.10.20**

## **1 INTRODUCTION**

These Procedures apply when a student or recognized or registered student organization is alleged to have violated the Cornell Student Code of Conduct (“Code”). Although these Procedures incorporate certain principles associated with the legal system (such as fair process protections), the Code is at its foundation a set of behavioral standards embracing teaching and learning opportunities, whenever possible, to foster personal development and accountability. Cornell’s goal is to provide a safe environment for all members of the University community, to teach and educate students regarding appropriate conduct, and to address misconduct when it occurs.

These Procedures establish a process for University administrative review, and do not seek to replicate substantive or procedural legal rules. Neither the Rules of Civil Procedure nor Rules of Evidence apply to these Procedures, though principles of fairness and predictability inherent in such rules inform and provide guidance. These Procedures are to be implemented in conjunction with the Code, where key definitions and authority (including jurisdiction) are described. The administrative bodies that manage and perform under these Procedures are described in Section 2. Complainants and Respondents are designated and described in Section 3.

## **2 ADMINISTRATION OF THE CODE AND PROCEDURES**

### **2.1 The Office of Student Conduct and Community Standards**

The Director (“Director”) of the Office of Student Conduct and Community Standards (“OSCCS”) manages the student conduct system and cases arising out of the Student Code of Conduct (“Code”).<sup>1</sup> The Director receives and ensures proper investigation and adjudication of alleged violations of the Code, or of any other regulation as the University President or Board of Trustees may direct.

The fundamental role of the Director is to ensure that complaints are handled with fairness, integrity, and objectivity for all parties concerned, consistent with the educational and rehabilitative goals of the University’s student conduct system. The Director does not prosecute cases against students. The Director shall hire and train competent individuals to undertake careful, fair, and objective investigations of complaints and to serve as chairs of hearing panels. The Director is also responsible for the training and administration of the University Hearing and Review Board, with the intention of ensuring fair and consistent adjudication, findings of responsibility and as appropriate, imposition of sanctions based on the circumstances of individual cases. Anyone can direct questions about the student conduct system to the OSCCS.

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<sup>1</sup> Throughout these procedures, various University officials, such as the Director, are assigned responsibility for performing specific functions. Named officials are authorized to delegate responsibility to other appropriate University officials and non-University consultants except where such delegation contravenes University policy. Additionally, named officials and their designees may always consult with appropriate University administrators, the Office of General Counsel, and subject-matter experts.

The Director shall be appointed by and reports to the Vice President for Student and Campus Life or designee. The Vice President shall consult with the Student Assembly (“SA”) and Graduate and Professional Student Assembly (“GPSA”) prior to the Director’s appointment and shall request representatives from the SA and GPSA to serve on the search committee when a new Director is hired. The Director shall provide an annual report to the Vice President, the SA and the GPSA on the operations of the office and of the student conduct system. The Director shall undergo an annual review overseen by the Vice President or designee. The Vice President or designee shall request and thoughtfully consider feedback from the SA and GPSA as part of that annual review.

## **2.2 Student Codes Counselors**

There shall be an Office of the Respondents’ Code Counselor and an Office of the Complainants’ Code Counselor. Student Codes Counselors are not attorneys and do not provide professional legal advice. Within the rules in these Procedures governing the participation of non-parties, Respondents and Individual Complainants may utilize Counselors exclusively, in addition to their own advisors or legal counsel, or may rely entirely on advisors or legal counsel of their choosing. Counselors explain how the student conduct system works and assist and support Respondents and Individual Complainants at every stage of proceedings.

Counselors are required to adhere to strict confidentiality responsibilities and must inform parties that they may discuss cases within their community of other Counselors for the sole purpose of soliciting advice from other Counselors about cases. A party may elect to have their Counselor not share information within their community of other Counselors.

The Lead Counselor for each office assigns individual Counselors to serve on individual matters. However, Respondents and Individual Complainants may request specific Counselors, which request shall be honored to the extent practically possible. Respondents and Individual Complainants may also request assignment of a new Counselor for good reason, which request shall be honored if practical and feasible in the discretion of the lead Counselor.

### **2.2.1 *Office of the Respondents’ Codes Counselor***

The Office of the Respondents’ Codes Counselor provides free assistance and representation within the student conduct system to Respondents involved in the Student Code of Conduct process and to students charged with violations of the Code of Academic Integrity and University policy 6.4.

Beginning in 2022, each spring, the SA, GPSA, and Office of the Student Advocate (“OSA”), in consultation with the Director, shall select the Lead Respondents’ Codes Counselor for the following academic year from a group of no more than three individuals nominated by the members of the existing Office of the Respondents’ Code Counselors. The Lead Respondents’ Codes Counselor shall be responsible for managing the Office but with administrative support from the University. The Lead Respondents’ Codes Counselor shall be subject to removal by a vote of the SA, GPSA, and concurrence of the Director for good cause, such as significant dereliction of duty or gross misconduct.

### **2.2.2 *Office of the Complainants’ Codes Counselor***

The Office of the Complainants’ Codes Counselor provides free assistance and representation within the student conduct system to Complainants involved in the Student Code of Conduct process and University policy 6.4.

Each spring, the SA, GPSA, and OSA, in consultation with the Director, shall select the Lead Complainants' Codes Counselor for the following academic year from a group of no more than three individuals nominated by the members of the existing Office of the Complainants' Code Counselors. The Lead Complainants' Codes Counselor shall be responsible for managing the Office but with administrative support from the University. The Lead Complainants' Codes Counselor shall be subject to removal by a vote of the SA, GPSA, and concurrence of the Director for good cause, such as significant dereliction of duty or gross misconduct.

### **2.2.3 *Selection and Oversight of the Student Code Counselors***

The Respondents' Code Counselor and the Complainants' Code Counselor, in consultation with the Director, shall set relevant qualifications for the Counselors, along with a selection and training process to be implemented by the Code Counselors with such support as may be requested from the Director. Counselors must either be law students, or other graduate or professional students with prior experience in an administrative, adjudicative, or advocative role in a student conduct system, and will be appointed by the respective Code Counselor for each office. Counselors will recognize that the goals of the Code are focused on education, rehabilitation and accountability, and shall treat parties, witnesses and each other with respect and consideration. Counselors not from the Law School shall serve for a minimum two-year term, and Counselors may be reappointed by the respective Code Counselor for an additional two-year term so long as their service is deemed exemplary, and they remain students at the University for that two-year period. Counselors may not serve beyond a second two-year term. Counselors may be dismissed by the respective Lead Counselor for good cause, such as significant dereliction of duty or gross misconduct, but are not subject to removal by the Director or other university administrator.

### **2.3 The Hearing and Review Board**

The Hearing and Review Board is appointed from nominations submitted by the University Assembly ("UA") in consultation with the four assemblies. The Board shall include at least 25 students, 15 faculty members, and 15 nonfaculty employees. The Assemblies and Senate shall solicit applications from interested faculty, students, and staff on an annual basis and submit them to the Director no later than April 1 of each year. If an Assembly or the Senate fails to provide the Director with the necessary number of applications by April 1 of a given year, the Director may independently solicit applications or otherwise identify interested faculty, students, or staff. All applications shall be confidentially shared with the Executive Committees of the SA and GPSA for review and evaluation. In consultation with those committees, the Director shall make appointments. The Director may appoint individuals to the full term of any unfilled position as of June 1 at their discretion, and may also make emergency appointments at any time on a temporary basis. No person shall serve on the Hearing and Review Board who is at the same time a member of the SA or GPSA, or is an employee of the Office of the Assemblies.

Members of the Hearing and Review Board are typically appointed for two-year staggered terms beginning in June 1 of the year appointed. Any appointment to fill a vacancy or to address an emergency shall become effective immediately. The Director shall have the authority, in consultation with the SA and GPSA Executive Committees, to remove a member of the Board if the member is reasonably deemed to not be honoring their commitment to communicate promptly regarding hearings, to serve on panels, to participate ethically in hearings, and otherwise to participate responsibly in this process.

### **2.4 The Hearing Panel Chair**

The Director shall engage a professional Panel Chair to guide Hearing Panel proceedings with appropriate training and expertise to manage technical questions and rulings. The Panel Chair does not vote on individual cases. Instead, the Panel Chair addresses the many procedural and evidentiary matters that arise

under these Procedures in a fair and consistent manner, across many individual cases and proceedings. The intent of appointing a trained Panel Chair is to afford consistency, fairness and professionalism in all cases proceeding to hearings under the Code. The Panel Chair shall participate in relevant training as required by the Director.

## **2.5 The Review Panel Chair**

Each June, the faculty members of the Hearing and Review Board shall select one of themselves to serve as Review Panel Chair for a one-year term. If the faculty members of the Hearing and Review Board fail to elect a Review Panel Chair by June 30 of a given year, the Director may appoint a Review Panel Chair from among them for either the full term or on a temporary basis. The Review Panel Chair does not vote on individual cases. The Review Panel Chair shall participate in relevant training as required by the Director.

## **2.6 University Hearing Panels**

A five-person panel of the Hearing and Review Board shall adjudicate cases under the Code. Panels are chosen through a random process but shall be appointed to include three students, one faculty, and one nonfaculty employee member.

## **2.7 University Review Panels**

A three-person panel of the Hearing and Review Board shall hear appeals under the Code. Panels are chosen through a random process but shall be appointed to include one student, one faculty, and one nonfaculty employee member.

## **2.8 Training**

Every person serving in an official capacity or role under these Procedures shall receive annual training from the Director or other appropriate university experts appropriate to their position. Training focused on diversity, equity and inclusion that is approved by the Presidential Advisors on Diversity and Equity (“PADE”) shall be required on an annual basis.

## **3 DESIGNATION AS COMPLAINANT AND RESPONDENT**

These Procedures distinguish between Reports and Formal Complaints. A Report of alleged prohibited conduct is often the first contact with the OSCCS. A Formal Complaint is filed with the Director in writing, and is required for certain processes (commencing with required notifications and investigation) to be initiated under these Procedures. Any person providing an initial Report or filing a Formal Complaint under these Procedures will be designated the “Complainant.” A person providing an initial Report or filing a Formal Complaint of interpersonal misconduct committed against that individual, such as assault and endangerment, harassment and hazing, and is acting in their capacity as a student is an “Individual Complainant.”

The VP SCL or designee may appoint a designated individual or individuals to represent the University or individual units as the Complainant in cases in which there is an institutional interest. Further, such institutional representatives (for example, from Residence Life or Sorority and Fraternity Life), may provide additional support to Individual Complainants in cases where violations of the Code have potentially affected both individual(s) as well as University concerns.

A student or organization against whom a Report or Complaint has been made will be designated the “Respondent.”

Both the Complainant and the Respondent are referred to as “party” or “parties” throughout these Procedures. Any notice to a party required by the Code or these Procedures may be given in person, electronically to the party’s cornell.edu email account (or for organizations, to the cornell.edu email address of the President or other officer of the organization as listed in CampusGroups or other University records), or by any other means that provide the party with reasonably effective and timely notice. At the time a party is given notice, that party must also be informed in writing that they are entitled to representation by a advisor/counsel of their choosing including a Codes Counselor (with contact information for the relevant Counselor’s office provided), and may be accompanied by such counsel/advisor or Counselor to any meeting or interview.

#### **4 EFFECTIVE DATE OF THESE PROCEDURES**

The effective date of these Procedures is to be set by the VP SCL but in no event later than prior to the commencement of the Fall 2021 semester. The VP SCL shall ensure public awareness and posting of these Procedures **at least 60 days prior to their effective date.**

These Procedures will apply in all cases where a Report or Formal Complaint of alleged prohibited conduct is made **on or after public posting of the effective date of these Procedures** with the exception of cases already in process, which shall be completed under existing procedures.<sup>2</sup>

Where the date of the alleged prohibited conduct precedes the effective date of these Procedures or a subsequent update to these Procedures, the definitions of prohibited conduct in existence at the time of the alleged conduct will be used.

These Procedures, however, will be used to investigate and resolve all Complaints made on or after the effective date of these Procedures or subsequent updates to these Procedures, regardless of when the conduct occurred.

#### **5 TIME LIMIT TO FILE COMPLAINTS**

To promote timely and effective review, the University strongly encourages persons with knowledge of possible violations of the Code to make Reports or file Formal Complaints as soon as possible, preferably within one year of the alleged prohibited conduct. A delay may affect the Director’s ability to gather relevant and reliable information, contact witnesses, investigate thoroughly and respond meaningfully, and may also affect the imposition of appropriate discipline upon a Respondent who has engaged in prohibited conduct.

While prompt reporting is strongly encouraged, the Director will accept and review any Report or Formal Complaint that is filed under these Procedures as long as the Respondent was a “student” at the time of the subject conduct and remains a “student” as defined by the Code (e.g., has not graduated or

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<sup>2</sup> This clause is intended to cover cases that occur at the very end of the spring semester which would routinely be carried over into the fall term. For conduct occurring **after the effective date of the new procedures** has been announced and **which have not yet been started procedurally** under the existing Code, the new procedures will govern.

permanently left the University).<sup>3</sup> If the Respondent is no longer a student at the time of the Formal Complaint, and the Director is unable to pursue resolution, the Director will assess whether any remedial steps can be taken to address any prohibited conduct or its effects on the Complainant or others. Special circumstances and the University's continued assertion of jurisdiction may apply where a student leaves the University to avoid a student conduct charge or its disposition.

## **6 COMPUTATION OF DEADLINES**

In computing any time period specified in these Procedures, the day of the event, act, or default that initiates the period will be excluded.

## **7 THE RESPONSE TO A REPORT OF PROHIBITED CONDUCT**

### **7.1 Initial Assessment**

Upon receipt of a Report alleging that a student or organization has violated the Code, the Director will make an initial assessment of the information and work to address any immediate health or safety concerns. Where the identity of an Individual Complainant is known, the Director will ensure that the Individual Complainant receives a written explanation of available resources and options and is offered the opportunity to meet promptly to discuss those resources and options. Where the identity of an Individual Complainant is unknown, the Director will assess the nature and circumstances of the Report, including whether it provides information that identifies the potential Individual Complainant, the potential Respondent, any witnesses, and/or any other third party with knowledge of the reported incident, and the Director will take reasonable and appropriate steps to respond to the complaint.

### **7.2 Actions Following Initial Assessment**

#### ***7.2.1 Where the Complainant Seeks Resolution Under These Procedures***

In any case where the Complainant reports prohibited conduct and requests resolution under these Procedures, the Director will move forward. Initiation of this process requires the Complainant to submit a signed, written Formal Complaint, if one has not already been filed.

#### ***7.2.2 Where the Complainant Requests That No Formal Complaint Be Pursued Under These Procedures***

The University will generally honor an Individual Complainant's choice not to file or withdraw a Formal Complaint. Where an Individual Complainant declines to participate in an investigation, the Director's ability to meaningfully investigate and respond to a report may be limited. However, the University may elect, particularly in cases involving threats to personal safety or inherent public safety considerations such as interpersonal violence, harassment, assault or hazing, to evaluate whether honoring the Individual Complainant's choice will adequately mitigate the risk of harm to that person or other members of the University community. The Director will consider the following factors, among others, when determining whether to honor the request that no formal resolution be pursued under these Procedures:

1. Whether the Respondent has a history of violent behavior or is a repeat offender;
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<sup>3</sup> Complaints against a student organization are addressed so long as the organization remains registered with or recognized by the University or is deemed to be operating, even without approval or recognition.

2. Whether the incident represents escalation in prohibited conduct;
3. Whether the Respondent presents a significant risk to public health and safety;
4. The increased risk that the Respondent will commit additional acts of interpersonal misconduct;
5. Whether the Respondent used a weapon or force;
6. Whether the Complainant is a minor;
7. Whether the University possesses other means to obtain evidence such as security footage or other tangible evidence; and
8. Whether available information reveals a pattern of perpetration at a given location or by a particular group.

Regardless of whether an Individual Complainant chooses to file or participate in an investigation of a Formal Complaint, the Director will assist an Individual Complainant with reasonable and available accommodations or interim measures in appropriate cases, with fairness towards and notice to the Respondent. Interim measures such as housing or academic/scheduling accommodations, referrals to counseling, mutual no-contact orders, or other supportive or protective measures are designed to advance and balance a number of goals:

- to support and protect the safety and health of the Individual Complainant, the Respondent, the University's educational environment, and the University community;
- to deter retaliation; and
- to preserve the integrity of the investigation and resolution process pursuant to these Procedures.

The Director may also take proactive steps, such as training or awareness efforts, to address misconduct in a general way that does not identify the Individual Complainant.

### ***7.2.3 Director's Determination that the Complainant's Request(s) Cannot Be Honored***

Where the Director determines that the office cannot honor the Individual Complainant's request that no complaint be pursued under these Procedures, the Director will promptly initiate the investigation process by filing a Formal Complaint on behalf of the University community. The Director will notify the Individual Complainant that the office intends to proceed and that it will take actions to protect and assist the Individual Complainant, including reasonable efforts to protect the privacy of the Individual Complainant. The Individual Complainant is not required to participate in any proceedings that follow, but is permitted to participate as a witness. In cases where the Respondent is a registered or recognized student organization, the identity of the Individual Complainant may be withheld if the Director, in their sole discretion, determines it is necessary to protect against retaliation. The identity of a Complainant representing the University may not be withheld.

### ***7.2.4. Alternative Dispute Resolution and Summary Resolution***

The Code aims to foster a system that prioritizes accountability, education and the growth of students as responsible community members. For this reason, these Procedures enable the Director to handle many Reports (or Formal Complaints) in a flexible way to address the alleged misconduct promptly and, where appropriate, in a manner emphasizing education, restorative justice, and rehabilitation. At any time the Director may also *recommend* that the parties explore restorative justice opportunities, alternative dispute resolution and/or for any Respondent to undertake voluntary alcohol or other drugs ("AOD") screening, education and prevention programming, rather than continuing under these Procedures. A Respondent need not accept responsibility for the prohibited conduct in order for such referrals to be made. Similarly, either the Complainant or the Respondent may request to engage in alternative dispute resolution or restorative justice processes at any time. Such a request will be carefully considered by the Director, with

opportunity for input from both parties if only one has requested diversion, and granted or denied at the Director's discretion.

The Director also has discretionary authority to summarily resolve charges that do not involve interpersonal misconduct (such as assault and endangerment, harassment and hazing) upon completion of an initial assessment when the Respondent agrees. In such cases, the Director and the Respondent may agree in writing to any resolution of the alleged offense(s), including but not limited to restitution, community service, or AOD screening, education and prevention programming. Summary resolution of matters involving interpersonal misconduct require the full involvement of the Individual Complainant pursuant to Alternate Resolution, Section 14, unless the Individual Complainant has chosen not to participate in the proceedings.

## **8 TEMPORARY SUSPENSIONS**

### **8.1 Temporary Suspensions Pending Resolution**

In consultation with appropriate University officials, the Director or other Presidential delegate<sup>4</sup> ("Issuing Official") has authority to temporarily to suspend a Respondent pending resolution of the underlying case where immediate action is necessary to protect the Complainant or the University community. Temporary Suspension may include the withdrawal of any or all University privileges and services, including class attendance, participation in examinations, utilization of University premises and facilities, and in the case of an organization, recognition or registration by the University, as determined by the Director.

Since the underlying allegation of prohibited conduct has not yet been adjudicated on the merits, a Temporary Suspension may be imposed only when available less restrictive measures are reasonably deemed insufficient to protect the Complainant or the University community. Further, the form of Temporary Suspension imposed shall be the least restrictive option that reasonably affords the necessary protections. In determining whether a Temporary Suspension is appropriate, the following factors, among others, should be considered:

- whether the Respondent has a history of violent behavior or is a repeat offender;
- whether the incident represents escalation in unlawful conduct;
- whether there are facts indicating a risk that the Respondent will commit additional acts of interpersonal misconduct or violence; and
- whether there represents reasonable basis of concern for retaliatory acts;
- whether there exists reasonable basis for concern over possible harm to the health or safety of others involved or the campus community generally;
- whether the Respondent used a weapon or force;
- whether, in the case of a registered or recognized student organization, relevant university policy requires a temporary suspension.

### **8.2 Review of Temporary Suspensions of Students and Organizations**

The Respondent may file a written request to lift the Temporary Suspension with the VP SCL. The Issuing Official may file a response. If the VP SCL determines that good cause for the Temporary Suspension is inadequate or absent, that other less restrictive alternatives are available, or that

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<sup>4</sup> For example, the Dean of Students.



circumstances have changed so that the suspension is no longer necessary, the Temporary Suspension will be immediately lifted. The VP SCL may simultaneously provide the Issuing Official guidance regarding appropriate alternate interim measures, and such alternatives are within the Issuing Official's continuing authority. The VP SCL's decision is final for all Temporary Suspension actions that continue to enable the Respondent to maintain core instructional activities and there is no further right of appeal. A complete suspension from all university activities such that the Respondent will lose the ability to continue academically may be appealed to the Provost, whose decision in such cases will be final.

## **9 NOTICE TO COMPLAINANT AND RESPONDENT OF DIRECTOR'S ACTIONS**

The Director will inform the Complainant and the Respondent of any actions undertaken that will directly affect either party, including the filing of a Formal Complaint.

## **10 NOTICE TO PARTIES OF A FORMAL COMPLAINT**

Upon receipt of a timely<sup>5</sup> Formal Complaint, the Director will notify the Complainant and the Respondent, in writing, of the commencement of an investigation and provide both parties with a copy of the Complaint, the Code, and these Procedures. Such notice will:

- identify the Complainant and the Respondent;
- specify the alleged prohibited conduct and its date, time, and location, to the extent known;
- specify the factual allegations pertaining to the prohibited conduct;
- specify any sanctions that may be imposed, including the University's transcript notation policy;
- identify the investigator appointed by the Director;
- include information about the parties' respective rights and obligations under the Code of Conduct and these Procedures;
- inform the parties of the availability of alternative dispute resolution and restorative justice processes for resolving complaints;
- inform the parties of their right to seek the assistance of a Counselor/advisor or attorney and a support person for emotional support, all of whom may accompany the respective parties to meetings and proceedings;
- inform the parties specifically of their right to a counsel/advisor of their choosing or a Codes Counselor, and provide a description of the Counselors' services and the contact information of the respective Counselors' office;
- inform the parties of the range of available resources, including mental health and academic support resources, and their ability to request disability access accommodations or considerations;
- explain the prohibition against retaliation; and
- instruct the parties to preserve any potentially relevant evidence, whatever its form.

## **11 COUNSELORS/ADVISORS AND SUPPORT PERSONS**

At all stages under these Procedures, both the Complainant and Respondent will be afforded the assistance of an advisor provided through the Offices of the Complainants' Code Counselor and Respondents' Code Counselor to assist and advise. Alternatively, each party has the right to select and consult with an advisor and/or legal counsel of their own choosing. Both the Complainant and Respondent also have the right to a support person of their choice.

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<sup>5</sup> See Section 5.

Counselors/advisors and support persons may be any person, including an attorney, who is not a party or witness or otherwise involved in the case. A Counselor/advisor and a support person may accompany the party to all meetings, such as investigative interviews, and proceedings, but it is generally expected that the parties will speak on their own behalf, and further, that Counselors/advisors and support persons will not be permitted to interfere with or disrupt meetings or proceedings. Throughout the proceedings, Counselors/advisors and support persons may also help the party prepare written submissions. During hearings, Counselors/advisors and support persons may confer with the party, and submit written requests and objections to the Hearing Chair on the party's behalf, and otherwise participate in the hearing at the time and in the manner prescribed by the Chair. In cases where suspension or dismissal may be imposed on an individual student Respondent, Counselors/advisors have an opportunity to engage in direct questioning of parties if they chose to testify or witnesses, subject to such reasonable standards of civility and respect as the Hearing Chair may impose.

By accepting the role of Counselor/advisor or support person, such persons agree to comply with the rules and processes set forth in these Procedures, including rules regarding confidentiality requirements. In unusual cases where either the Director or a Panel Chair determines that a Counselor/advisor or support person has a serious conflict of interest, or their conduct undermines the integrity of these Procedures or is abusive towards other participants in these proceedings, the Counselor/advisor or support person will be prohibited from continuing to serve in that case. The affected party will be permitted a reasonable amount of time to obtain a substitute Counselor/advisor or support person and acquaint that person with the case.

## **12 WRITTEN SUBMISSIONS**

For all written submissions permitted by these Procedures, other than the written objections and requests specifically permitted during hearings, the documents must be submitted by the individual parties. Written submissions from a Counselor/advisor, support person, or other individual made on behalf of a party, other than the written objections and requests specifically permitted during hearings, will not be included in the investigative or hearing records. Where a form has been developed by the Director for a written submission, the party must use the form for the submission. Where required by these Procedures, a party must sign their written submission.

## **13 OBLIGATION TO PROVIDE TRUTHFUL INFORMATION**

At all stages of the process, all Cornell University community members are required to provide truthful information. Obstruction of an investigation and/or adjudication under these Procedures is prohibited and independently subject to disciplinary sanctions under the Code. This provision does not apply to reports made or information provided in good faith, even if the facts alleged are not later substantiated.

## **14 DUTY TO COOPERATE**

All members of the University community are expected to cooperate and participate in inquiries, investigations, and resolutions of Reports and Formal Complaints under these Procedures. However, the non-cooperation or non-participation of a party or witness cannot be the basis of an adverse action or an adverse inference in any case involving an individual Respondent.

## **15 ALTERNATE RESOLUTION OF A FORMAL COMPLAINT**

The parties or the Director may seek to resolve a Formal Complaint through Alternate Resolution at any time. Participation in Alternate Resolution is entirely voluntary; the Director will neither pressure nor compel either party to participate in the process or to agree to any specific terms. For the Alternate

Resolution process to begin, both the Complainant and the Respondent must agree to explore Alternate Resolution as a potential means of resolution, and the Director must agree that the matter is appropriate for this process. The parties are strongly encouraged to consult with their Counselor/advisor and any support persons during the Alternate Resolution process.

The Director will manage the Alternate Resolution process and have access to all University records in the matter, including any records or reports prepared during an investigation. The Director may personally conduct Alternative Resolution or utilize mediators or others with appropriate expertise to support the process through consultations with both parties. The Director ultimately documents the proposed terms of a potential Alternate Resolution agreement. Such terms may include, but are not limited to, any sanctions or remedies that could be imposed by a Hearing Panel after a hearing under these proceedings.

The investigation will be paused during the Alternate Resolution process. At any time before a written agreement is effective (see below), the Complainant or the Respondent may withdraw from the Alternate Resolution process, and the Director may also, at their discretion, terminate the process. If the Alternate Resolution process is terminated for any reason, the matter continues under these Procedures. For this reason, the investigator will not participate in an Alternate Resolution process.

If both parties are satisfied with the Director's recommendation, the matter will be resolved with a written agreement to be executed by both parties. The Director will provide each party, separately, with a copy of the proposed agreement for the party to review, sign, and return. Once a party has returned the signed agreement to the Director, the party has two (2) business days to reconsider and withdraw from the agreement by notifying the Director in person or in writing. If either party withdraws from the agreement, the Formal Complaint will be resolved according to these Procedures. Once an agreement is effective, the parties may not appeal the agreement.

If the Respondent agrees to an Alternate Resolution that provides for a suspension, withdrawal, or dismissal (i.e. expulsion) from the University, there will be a transcript notation consistent with University policy. The parties are expected to honor and comply with the terms of the Alternate Resolution. Later noncompliance may be subject to proceedings under the Code.

To protect both parties' confidential disclosures within the Alternate Resolution process, if the matter moves back to the Formal Complaint resolution process, neither the Director nor the parties will disclose to the investigator, Panel Chair, University Hearing Panel, or University Review Panel either the fact that the parties had participated in Alternate Resolution or any information learned during the process.

## **16 THE PARTIES' PARTICIPATION IN THE INVESTIGATION AND HEARING PROCESSES**

Both the Complainant and the Respondent may decline to participate in the investigation and/or hearing. However, the Director may continue without a party's participation, complete the investigation, and the Hearing Panel may meet, reach findings, and issue sanctions based on the record available.

### **16.1 Declining to Participate in the Investigation**

Parties are expected to cooperate in the process, including the investigative stage and interviews. If a party declines to participate in investigative interviews or other aspects of the investigative process, the party will generally forfeit the opportunity at the hearing to give a written opening statement, testify, and give oral and written closing statements, absent demonstration of compelling circumstances that reasonably prevented the party from cooperating in the process. The potential for or pendency of a related civil or criminal court proceeding shall not constitute compelling circumstances. A party who later seeks

to participate may file a written request with the Panel Chair. No request for participation under this Section will be granted to a party who failed to request a postponement or otherwise timely explain to the investigator why they were unable to engage with the investigation process prior to filing the request. If the Panel Chair agrees that non-participation was justified by compelling circumstances, they will assess whether the investigation should be reopened or whether the party should instead be permitted to file a written statement for consideration by the Hearing Panel. In determining what level of participation (and resultant delays) are appropriate, the Panel Chair shall consider fairness to the opposing party and the University's legitimate interest in resolving the matter. The Panel Chair's decisions on such requests to reopen are final and are not subject to further review.

## **16.2 Declining to Attend or Participate in the Hearing**

Parties are expected to participate in the hearing. If, despite being notified of the date, time, and location of the hearing (at their cornell.edu email address or last known contact information), either party is not in attendance, the hearing may proceed, findings may be reached and applicable sanctions may be imposed. In addition, the parties are not required to testify at a hearing and the Hearing Panel will not draw a negative inference from a party's election to remain silent. Where a party declines to testify, the Hearing Panel's ability to hear information necessary to make an informed decision in that party's favor may be limited and the Hearing Panel will render a decision on the record and the evidence before it.

## **17 CONSOLIDATION OF INVESTIGATIONS AND HEARINGS UNDER THESE PROCEDURES**

At the discretion of the Director, multiple reports or Formal Complaints under these Procedures that are factually related will be joined in one investigation whether they involve single or multiple Complainants or Respondents.

At the discretion of the Panel Chair, in consultation with the investigator, multiple Formal Complaints, whether or not joined in one investigation, and multiple investigations under these Procedures may be joined in one hearing if doing so is likely to result in reliable and more efficient outcomes without causing prejudice to a party or parties or confusion for the fact finders. In determining whether to consolidate, the Panel Chair will provide the parties with an opportunity to explain their preferences for consolidated or severed hearings. In all hearings involving multiple Respondents, the Hearing Panel will consider individually the sanctions and remedies appropriate for each Respondent.

## **18 INVESTIGATION OF A FORMAL COMPLAINT**

### **18.1 Overview of Investigations of a Formal Complaint**

The investigation is designed to be timely, thorough, and impartial and to provide for a fair and reliable gathering of the facts. All individuals involved in the investigation, including the Complainant, the Respondent, and any witnesses, will be treated with fairness and respect. The investigation will generally include individual interviews of the Complainant, the Respondent, and relevant witnesses. Upon completion of the investigation, the investigator will prepare a final investigative record and an investigative report. The investigative record is a compilation of statements by the parties and witnesses as well as other evidence gathered by the investigator. The investigative report explains the scope of the investigation and summarizes the information gathered. The investigator does not make any determination or recommendations as to responsibility, other than to make an assessment, in consultation with the Director, as to whether there is sufficient evidence for the case to proceed. The investigator may not proceed on any charge for which an element necessary to determine responsibility is missing. In the event of a hearing, the final investigative record and report become part of the hearing record.

The Complainant and the Respondent will have an equal opportunity to participate in the investigation, including an equal opportunity to be heard, submit evidence, and suggest witnesses who may have relevant information. Specifically, during the investigation, each party will have the opportunity to:

- be interviewed by the investigator;
- review their own interview statements prior to the statements being distributed to the other party and included in a draft investigative record;
- provide evidence to the investigator;
- suggest witnesses to be interviewed by the investigator;
- propose questions to be asked of witnesses and the other party; and
- review a draft investigative record and comment on it, in writing, before the investigator finalizes the record and prepares an investigative report.

At the hearing, the Hearing Panel will rely upon the final investigative record and report as well as any additional statements and information provided to the Hearing Panel pursuant to the procedures set forth below.

### **18.2 Time Frame of the Investigation**

The investigation will be completed as expeditiously as possible, commensurate with its complexity. The investigator will establish reasonable time limits for the various stages of the investigation, including meetings and deadlines for any submissions or responses, and the parties shall comply with these time limits. The parties may request extensions that may be granted, if reasonable, at the discretion of the investigator. Extensions granted to one party will be granted to the other party. Delays simply to prolong the process will not be permitted, and failure to meet deadlines will generally result in forfeiture of a party's ability to participate in that aspect of the investigation. Subject to a demonstration of compelling circumstances as described in section above, a party who declines or fails to participate in a meeting or interview, provide evidence, or suggest witnesses, waives their right to do so upon the issuance of the final investigative record and report.

### **18.3 Investigative Interview Process**

The parties have the opportunity to request in writing witnesses they would like the investigator to interview and offer questions and topics they would like the investigator to ask of witnesses, themselves, and/or the other party. The investigator has the discretion to determine the relevance of any proffered witnesses or questions, and, accordingly, the investigator will determine which witnesses to interview and questions to be asked. In general, the investigator will not consider as relevant witnesses who are offered solely for the purpose of providing evidence of a party's character.

Investigative interviews with the parties and any witnesses may be audio (or audio-video) recorded at the discretion of the investigator. At the start of a recorded interview session, the investigator will inform an interviewee that the session is being audio recorded. Parties and witnesses will receive copies of any audio recordings of their own interviews. The parties will be provided with access to listen to any audio recordings of other witnesses and/or other party interviews upon request during business hours at a secure and private campus location, with access facilitated by the Director. All persons being interviewed, including the parties, and their Counsel/advisor and support person are prohibited from recording interviews.

In the event of a failure rendering an audio recording of an interview inaudible in whole or in part, the investigator will either reconstruct the interview with input from the interviewee or re-conduct the

interview, as the investigator deems appropriate. The reconstructed interview statement will become part of the investigative record. A recording failure will not constitute grounds for appeal.

#### **18.4 Evidentiary Materials**

The investigator will gather relevant available evidentiary materials, including physical evidence, documents, communications between the parties, and electronic records and media as appropriate. The parties may request in writing the evidentiary materials they would like the investigator to obtain. The investigator has the discretion to determine the relevance of any requested materials, and, accordingly the investigator will determine what materials to seek to obtain.

#### **18.5 Expert Testimony and Materials**

If the investigator determines that expertise on a topic will assist the Hearing Panel in making its determinations, upon the investigator's own initiative or at the request of a party, the investigator may include in the investigative record medical, forensics, technological, or other expert testimony and materials (such as writings and recordings) that the investigator deems relevant and reliable. The investigator has the discretion to determine the relevance and reliability of any expert testimony and materials, and, accordingly, the investigator will determine what, if any, expert testimony and materials will be included in the investigative record. Requested expert testimony or materials not included in the investigative record will not be considered by the Hearing Panel. The results of polygraph tests and other "lie-detection" techniques are inadmissible in proceedings under these Procedures.

#### **18.6 Evidence to be Excluded or Redacted from the Record**

At the request of a party or witness, the investigator during the investigation or the Panel Chair during the hearing process, may exclude and, as necessary, redact the following content:

1. Past Findings: During both the investigation and any hearing to determine responsibility, participants in this process may request exclusion of evidence of their own past school disciplinary findings. Such past findings may be probative and thus admissible, however, to demonstrate a pattern of misconduct, at the discretion of the Panel Chair. Such findings are regularly admissible at the stage of the hearing for determining sanctions.
2. Mental Health Treatment and/or Diagnosis: Generally, during both the investigation and any hearing to determine responsibility, participants in this process may exclude evidence of their own mental health diagnosis and/or treatment. However, any party who wishes to have the Hearing Panel consider mental health information that the party considers favorable and relevant to their case must voluntarily share such information with the investigator for inclusion in the investigative record.
3. Sensitive Personal Identifying Information and Medical Records: Throughout these proceedings, sensitive personal identifying information, such as Social Security numbers and irrelevant information contained in medical records, will be excluded.

In addition, in cases where the Respondent is a registered or recognized student organization, the investigator may exclude the identity of a student witness and redact information that would allow student witnesses to be personally identified, where the investigator determines it is necessary to protect a student witness from retaliation.

Exclusions and redactions will be noted and thereby become part of the investigative record.

Excluded or redacted content not included in the investigative record will not be considered by the Hearing Panel. The parties should make all requests for exclusions and redactions to the investigator during the investigation prior to the issuance of the final investigative record and report.

### **18.7 Draft Investigative Record and the Parties' Review**

Upon completion of the investigation, the investigator will prepare and provide to the parties an electronic or hard copy of a draft investigative record. The investigative record is a compilation of the investigative interviews, evidentiary materials, and expert testimony and materials, if any, and includes:

- transcripts (but not audio files) of all interviews by the investigator with the parties and any witnesses, if applicable; and
- copies of any documents, electronic records, and media and photographs or descriptions of physical materials collected during the course of the investigation and not excluded from the investigative record under these Procedures.

The parties will have five (5) business days to review the draft investigative record and submit in writing:

- any comments about content, including requests for redaction;
- any requests for the investigator to conduct further investigation or questioning.

The investigator has complete discretion whether to grant such requests. The parties' written comments and requests will become part of the final investigative record.

### **18.8 Final Investigative Record and Report**

The investigator will issue a final investigative record and an investigative report. In the report, the investigator will explain the scope of the investigation and summarize the information gathered during the investigation. At their discretion, the investigator may identify contested and uncontested facts, highlight inconsistencies, credibility issues and observations and address relevancy of evidence. The investigator will not render an opinion on responsibility, other than to make the determination as to whether there is sufficient evidence to proceed to a hearing (see below).

## **19 DISMISSAL OF A FORMAL COMPLAINT**

The Director may dismiss a Formal Complaint and close a case at any stage of proceedings where the Director determines:

- the subject matter of the complaint or the individual against whom the complaint has been filed are not subject to the University's jurisdiction under these Procedures; or,
- the facts set forth in the Formal Complaint do not constitute prohibited conduct under the Code; or,
- the Complainant fails or refuses to cooperate with the investigation such that the investigator is materially hindered in their ability to investigate, including where the Complainant cannot be located, the Complainant fails or refuses to be available for interviews or meetings, or the Complainant fails to provide necessary information; or,
- the investigator concludes, after appropriate investigation, that a Hearing Panel would not have a reasonable factual basis on which to find that the Respondent committed the prohibited conduct alleged.

If the Director determines that a Formal Complaint should be dismissed, the Director will provide the Complainant with a written decision explaining the reasons for the dismissal and notify the Complainant of the dismissal. The Complainant may file a written request to the Hearing Panel for review of the Director's decision to dismiss. Such review must be requested within five (5) business days in the form of a letter explaining why the dismissal is erroneous, and shall include any written evidence in support of the Complainant's position. The materials are to be submitted to the Director, who will forward them to the Hearing Panel and the Panel Chair.

The Director will also notify the Respondent that a request for review has been filed and provide a copy of the Complainant's letter and any supporting materials to the Respondent. The Respondent may respond in writing to the Complainant's request for review of the dismissal in a letter to the Hearing Panel no later than five (5) business days from the date of such notification. The response is to be submitted to the Director, who will forward it to the Hearing Panel, the Panel Chair, and the Complainant.

Review by the Hearing Panel is conducted exclusively on the parties' materials and the record. There is no hearing. The Hearing Panel shall not disturb the Director's decision by substituting its own judgment for the judgment of the Director unless the Hearing Panel determines that the dismissal was clearly in error. If the Hearing Panel determines that the dismissal was clearly erroneous, the Formal Complaint will be reinstated and resolved according to these Procedures without further appeal of the decision to reinstate. If the Hearing Panel determines that the dismissal was not clearly erroneous, it will affirm the dismissal, which action is final and not subject to further review.

## **20 HEARINGS**

### **20.1 Overview of Hearing Process**

Findings of responsibility and determinations regarding sanctions and remedies are made through a hearing process conducted by the five (5) member Hearing Panel and a non-voting Panel Chair. At least four members of a five-person Hearing Panel must sit for a given case, in addition to the nonvoting Panel Chair, and at least three votes shall be required for any decision. The hearing is intended to provide the parties with a fair opportunity to present relevant information and to enable the Hearing Panel to make informed decisions regarding responsibility and sanctions/remedies.

A member of the Hearing Panel may be asked to withdraw from participation for good cause (including a valid conflict of interest), which shall be determined by the Panel Chair. Mere knowledge of the events at issue shall not disqualify a member. In the event that a member withdraws or is excused, an alternate member shall be randomly selected pursuant to the standard procedure for selecting Hearing Panel members.

### **20.2 Presumption of Non-Responsibility and Standard of Proof**

In cases where the Respondent is an individual, the Respondent is presumed "not responsible" unless and until a Hearing Panel finds the Respondent responsible for prohibited conduct under the Code by a majority vote using the **clear and convincing standard of proof**. Clear and convincing evidence is a higher standard than the civil law's more-likely-than-not ("preponderance") standard, but a lower standard than the criminal law's beyond-a-reasonable-doubt standard.

In cases where the Respondent is a student organization, the Respondent is presumed "not responsible" unless and until a hearing panel finds the respondent responsible for prohibited conduct under the Code by a majority vote using the **preponderance of the evidence** standard. Preponderance means that it is more likely than not that the Respondent committed all of the elements of the alleged prohibited conduct.



If the Hearing Panel does not find the Respondent responsible for any prohibited conduct under the Code, it will dismiss the case. If the Hearing Panel finds that the Respondent is responsible under the Code, it will consider appropriate sanctions and remedies.

### **20.3 Responsibilities of the Panel Chair and Hearing Panel**

The Panel Chair provides procedural oversight and guidance to the process and the Hearing Panel. However, the Hearing Panel makes all findings and issues any sanctions or remedies. The Panel Chair will draft the Hearing Panel's decision, including findings of fact and rationales for their determinations regarding both responsibility and sanctions or remedies. The Panel Chair will obtain the Hearing Panel's review and approval before issuing a written decision.

### **20.4 Notice of Hearing**

Hearings are scheduled as timely as possible after completion of an investigation. A timely Notice of Hearing is sent to the parties which includes the charges at issue; a brief summary of the alleged prohibited conduct; the date, time, and place of the hearing; the name of the Panel Chair; and, if determined, the Hearing Panel members. If the notice does not include the name of the Hearing Panel members, the parties will be so notified, in writing, at a later time, prior to the hearing. All efforts will be made to provide the Notice of Hearing no less than ten (10) business days prior to the hearing.

### **20.5 Request to Reschedule Hearing**

Either party may request that a hearing be rescheduled. Absent extenuating circumstances, requests to reschedule must be submitted at least three (3) business days prior to the hearing. A request to reschedule a hearing must be supported by a compelling reason for the delay. Given the number of individuals involved in a hearing, and the attendant difficulty of scheduling and rescheduling them in a timely manner, it may not be possible to accommodate all scheduling requests. The Panel Chair may also reschedule a hearing, without a request by the parties, when there is reasonable cause to do so.

### **20.6 Newly Discovered Evidence**

If after the issuance of the final investigative record and investigative report and prior to the hearing, a party seeks to present a witness or introduce evidence not requested prior to the hearing and not disclosed to the investigator, the Panel Chair may grant admission of a witness or evidence only upon a sufficient showing that the witness or evidence is highly relevant, material, and could not have been discovered during the investigation with reasonable due diligence.

Where a Panel Chair permits a party to introduce a newly discovered witness or evidence, to prevent surprise to the other party, the Panel Chair will reschedule or adjourn the hearing for the investigator to review the newly discovered witness or evidence. The Panel Chair may also re-open the pre-hearing submission process, as appropriate, so that the parties may respond to the new information.

### **20.7 Pre-Hearing Submissions by the Parties**

After providing the parties with copies of the final investigative record and report to be transmitted to the Hearing Panel, the Director will instruct the parties, in writing, that they have the opportunity to submit a written opening statement (not to exceed 2500 words) and a list of proposed witnesses. The parties may not add or address information in the opening statement not contained in the investigative record, as the

Hearing Panel will not consider new information. The parties should include specific page citations to the final investigative record in the opening statement.

All interview statements contained in the final investigative record become part of the hearing record and are before the Hearing Panel. If a party wants the Hearing Panel to hear directly from a witness, the party must submit a written witness request and shall include:

1. The names of proposed witnesses, including the investigator, if the party requests that the investigator testify.
2. For each proposed witness a brief explanation of why the individual's presence is relevant and helpful to the Hearing Panel in determining responsibility. For example, the party should briefly explain why a witness's interview statement contained in the final investigative report is not sufficient for the Hearing Panel to make its finding.

The Panel Chair will establish a reasonable deadline for these submissions, typically no longer than five (5) business days. The Panel Chair, in consultation with the Hearing Panel, will review and approve the parties' opening statements (for relevance and admissibility) and requests for witnesses, and the parties will be provided with those decisions in writing, which decisions are final. The Panel Chair shall supply each party with the other's opening statement and names of approved witnesses at least five (5) business days before the hearing.

## **20.8 Hearing Process and Format**

### ***20.8.1 Overview of Hearing Process and Format***

Hearings brought by Individual Complainants will be private. The only persons present will be the parties, their Counselor/advisor and support person, witnesses (when testifying), the Hearing Panel and Panel Chair, (and, at the Panel's discretion, its counsel), the investigator, and any staff necessary for the conduct of the hearing. Witnesses may be present only for their own testimony. Hearings in cases brought by a university Complainant (e.g. not brought by Individual Complainants) shall also be private unless (a) the Respondent notifies the Director of OSCCS no later than five (5) business days before the hearing that they wish to have a public hearing, in which case such request shall be granted. However, notwithstanding the Respondent's request for a public hearing, any student witness in any hearing process shall have a right to request and to privately provide their testimony, and the Hearing Chair shall ensure that such individual's testimony and personal identifying information are not presented or discussed in any public component of the hearing.

In cases of interpersonal misconduct such as assault, harassment or hazing, either party may request that the parties with their advisor(s) and support person, if applicable, will be in separate rooms. If separated, the parties will participate remotely via a secure audio-visual connection, with the exception that when a party testifies and gives their oral closing statement, generally, they should do so in the presence of the Hearing Panel and Panel Chair; they may be accompanied by their Counselor/advisor and support persons.

The Panel Chair, in consultation with the Hearing Panel, may establish reasonable time limits, rules, and format. The Panel Chair may adjourn the hearing, once commenced, and later reconvene the hearing in consideration of factors including, but not limited to, the unavailability of a witness, party, Panel Chair, Hearing Panel member, or needed personnel; inclement weather; late hour; or in order to make an evidentiary or procedural ruling.

Formal rules of evidence do not apply, and the Panel Chair shall make all determinations regarding the admissibility, probative value, prejudicial effect, repetitiveness, redundancy, relevancy, etc., of evidence presented. Evidence that was excluded or redacted from the investigative record as impermissible will not be admissible at the hearing. Typically, the format of the hearing will be as follows:

- Introduction by the Panel Chair. The Panel Chair will explain the hearing process, address any necessary procedural issues, and answer questions.
- Testimony by the Complainant.
- Testimony by the Respondent.
- Testimony by any witnesses.
- Closing statements by the Complainant followed by the Respondent.

### ***20.8.2 Testimony***

Testimony is conducted through a question-and-answer format. Questioning will primarily be conducted by the Hearing Panel, but the Panel Chair may supplement the Hearing Panel's questioning. The Panel Chair will ask persons being questioned to affirm that they will testify truthfully. Both the Complainant and the Respondent may testify or decline to testify and may make their election when their turn to testify arises. If a party testifies, they are expected to answer all questions asked. A party who testifies may propose supplemental questions that they wish to answer. Counselors/advisors participation in this process as set forth in Section 11 of these Procedures.

The Panel Chair, in consultation with the Hearing Panel, may call a witness not on the witness list but previously interviewed by the investigator, and ask any question. In such cases, the parties will be given time to propose questions for the witness.

### ***20.8.3 Closing Statements***

The parties may provide both oral and written closing statements. This is the opportunity for the parties to marshal the evidence in the hearing record and suggest inferences and conclusions. The parties may not add or address information not contained in the hearing record, as the Hearing Panel will not consider new information. Nor may the parties address issues that pertain to sanctions and remedies. The Hearing Panel does not consider these issues when determining responsibility. The parties may appropriately raise such issues in their Impact/Mitigation Statements.

The Panel Chair will establish a time limit for brief oral closing statements, typically around five (5) minutes. The Panel Chair will also set the schedule for submission of written closing statements. The parties should assume that deliberations will commence immediately following the hearing, in which case the parties will be expected to submit written closing statements shortly after the oral closing statements. If there is an adjournment for deliberations, the Panel Chair may provide the parties with limited additional time to submit their statements.

Each party's signed closing statement will be limited to 2000 words and to the evidence contained in the investigative record and hearing. The written statements will be distributed to the other party, Panel Chair, and Hearing Panel for their review.

### ***20.8.4 Impact/Mitigation Statement***

The parties are permitted, but not required, to prepare a written Impact/Mitigation Statement relevant to any sanctions. The parties may submit the statement up until the end of a hearing, but are advised to begin

to compose such statements in advance. The statements are distributed to the Hearing Panel only upon a finding of responsibility and are included with the Hearing Panel's written decision to the parties.

### **20.9 Deliberations on Findings of Responsibility**

After closing arguments, the Hearing Panel may begin its deliberations. Deliberations will be completed as expeditiously as possible. Deliberations are conducted in private and they are not audio-recorded.

### **20.10 Sanctions and Remedies**

A Hearing Panel that finds the Respondent responsible will continue its deliberations to consider sanctions and remedies. It will issue its findings on responsibility and sanctions/remedies simultaneously. Prior to deliberating on sanctions and remedies, the Panel Chair will distribute to the Hearing Panel any written or recorded Impact/Mitigation Statements previously submitted by the parties.

If the Respondent has a Cornell disciplinary record, a known disciplinary record from another institution, or a known criminal conviction, the Panel Chair may distribute to the Hearing Panel a copy of such disciplinary and/or criminal records prior to deliberating on sanctions and remedies. (Where an educational record, including a Cornell disciplinary record, is being considered solely for sanctions, it will not be shared with the Complainant.)

The Panel Chair may support the deliberations but may not express views on the merits and may not vote. The Hearing Panel will determine sanctions and remedies by a majority vote. In determining sanctions and remedies, the Hearing Panel will consider:

- the severity of the prohibited conduct;
- the circumstances of the prohibited conduct;
- the impact of the prohibited conduct and sanctions and remedies on the Complainant;
- the impact of the prohibited conduct and sanctions and remedies on the community;
- the impact of the prohibited conduct and sanctions and remedies on the Respondent;
- prior misconduct by the Respondent, including, the Respondent's previous disciplinary record at Cornell University and if known, other disciplinary records or criminal convictions;
- the goals of the Code and these Procedures;
- the Respondent's malicious or deliberate intent to harm another person; and
- any other mitigating, aggravating, or compelling factors.

The Hearing Panel may impose one or more of the following student sanctions and remedies:

- Measures similar in kind to the interim measures specified under these Procedures.
- Appropriate educational steps (such as alcohol or drug education, reflection exercises, counseling, or directed study).
- Community work, which shall not be more than 80 hours per violation, and must be performed in a manner acceptable to the Director.
- Restitution to the Complainant.
- Fines of not less than \$20 nor more than \$500 payable to the University Treasurer.
- Restrictions or loss of specific or all privileges at the University for a specified period of time.
- Oral warnings.
- Written reprimands.
- Disciplinary probation for a stated period.
- Deferred suspension.

- Suspension from the University for a stated period not to exceed three (3) years.
- Dismissal (i.e., expulsion) from the University.

The Hearing Panel may impose one or more of the following sanctions and remedies on organizations:

- Measures similar in kind to the interim measures specified under these Procedures.
- Appropriate educational steps for organization members (such as alcohol or drug education, reflection exercises, counseling, or directed study).
- Community work performed by organization members, which shall not be more than 80 hours per violation, and must be performed in a manner acceptable to the Director.
- Restitution.
- Fines of any reasonable and appropriate amount payable to the University Treasurer.
- Restrictions or loss of specific or all privileges for the organization at the University for a specified period of time.
- Written reprimands.
- Disciplinary probation, i.e. a change to the organization's recognition or registration status with the university that may include limitations on permitted activities.
- Suspension from university recognition or registration to operate for a stated period of time. The Hearing Panel may also recommend that the organization be required or permitted to petition the appropriate university office for return after a stated period of time. A minimum of a three-year suspension is required for (1) hazing violations that include coerced alcohol or other drug consumption, sexual and related misconduct or other forms of violence or mentally abusive behavior that poses a threat to health and safety; and (2) violations of risk management and social event policies, rules or regulations that pose health and safety risks, including but not limited to facilitating, allowing, or requiring underage alcohol consumption, insufficient event monitoring/controls, or failure to register an on- or off-campus events where alcohol is present.
- Dismissal, i.e., permanent rescission of permission to operate on University property and/or termination of the organization's agreement and relationship with the University.

Ordinarily, the penalties for subsequent or repeated violations, whenever such violation(s) occur, should be more severe than for a first violation. Further, certain types of violations are so fundamentally inconsistent with the University's educational mission that, absent unusual mitigating factors, a sanction of substantial suspension or dismissal ordinarily will ordinarily be imposed. Such violations include acts of violence or other violations that substantially threaten the University's educational mission or property, or the health or safety of University community members. The Hearing Panel may also recommend to the Director that the University take measures on campus to remedy the effect or prevent the reoccurrence of such prohibited conduct. Sanctions and remedies will be effective immediately unless otherwise specified by the Hearing Panel.

#### **20.11 Decision of the Hearing Panel**

The Hearing Panel will issue a written decision as expeditiously as possible upon completion of deliberations. The Director will provide the written decision to the parties simultaneously and as soon as practicable. The decision will include:

- The specific prohibited conduct for which the Respondent was found responsible and not responsible; and
- the findings of fact and the rationale for the Hearing Panel's determinations regarding both responsibility and sanctions.

The decision may incorporate and reference any portions of the proceedings, including the investigative record and report, as the Hearing Panel deems appropriate. The decision will include instructions and time limits for appeals. Both the Complainant and the Respondent will be informed simultaneously of the decision and any sanctions and remedies, the date by which the requirements must be satisfied (if applicable), and the consequences of failure to satisfy the requirements.

## **20.12 Hearing Record**

The hearing record will include: the audio recording of the hearing, the Hearing Panel's decision, the final investigative record and report, the parties' pre-hearing submissions, the written witness lists, written opening and closing statements, written submissions permitted by these Procedures made to the Panel Chair or during the hearing, and the parties' Impact/Mitigation Statements (if considered by the Hearing Panel). The hearing record may also include a transcript of the hearing.

## **21 APPEAL OF A HEARING PANEL DECISION**

Both the Complainant and the Respondent may appeal a decision of the Hearing Panel to a three (3) member Review Panel that is chaired by the nonvoting Review Panel Chair. No person who served on the Hearing Panel will sit on the Review Panel in the same case. A member of the Review Panel may be asked to withdraw for good cause upon request of either party, which determination shall be made in the Review Panel Chair's sole discretion. If the Review Panel Chair is reasonably challenged by a party, the Director shall appoint another member. In the event that a member withdraws or is excused, an alternate member shall be randomly selected pursuant to the standard procedure for selecting Review Panel members.

Appeals will be based solely upon the hearing record. If the Review Panel reverses a finding of not responsible, the record on appeal will be supplemented with the parties' Impact/Mitigation Statements. Findings of fact will not be set aside unless clearly erroneous. Harmless error will be ignored.

Appeals may be brought only upon one or more of the following grounds:

1. A University official or officials, including the Hearing Panel, assigned responsibility for performing specific functions by these Procedures, committed an error in interpreting or applying the Code of Conduct or these Procedures, and such error had a prejudicial effect upon the outcome.
2. The Hearing Panel rendered a decision that is clearly erroneous.
3. New evidence was discovered after the decision that could not have reasonably been discovered before the decision and that would, with high probability, have changed the outcome.
4. The sanctions or remedies are substantially disproportionate to the severity of the injury/violation or are otherwise manifestly unjust.

The appealing party commences an appeal by submitting a written statement to the Director within ten (10) business days of service of the Hearing Panel's decision.

The appeal statement will be limited to 3500 words and must set forth:

- the determination(s) being appealed,
- the specific ground(s) for the appeal, and
- the facts supporting the grounds.

Failure to submit an appeal within the ten (10) business days or any approved extension constitutes waiver of the right to appeal. The Review Panel has discretion to grant any such request upon a finding of good cause for the delay.

A copy of the appeal statement will be provided to the other party, who, within ten (10) business days may submit a written response to the Director. The response should address both the specific ground(s) for appeal set forth in the appealing party's statement and the specific facts asserted by the appealing party. The response will be limited to 2500 words.

The Review Panel will issue a timely written decision, typically no later than thirty (30) business days after receipt of the non-appealing party's submission or the time for submission has expired. The decision is final and binding on all parties. The decision must be by a majority vote of the Review Panel and will include the rationale for the Review Panel's decision and any dissenting opinion.

The Review Panel may affirm the decision of the Hearing Panel or sustain any of the above-specified grounds for appeal, in which case the Review Panel may:

- reverse a finding;
- change a sanction or remedy;
- remand a case to the original Hearing Panel for clarification or reconsideration consistent with the Review Panel's decision, if doing so would assist with the timely, practicable, and efficient resolution of the case;
- remand a case for a new hearing to either the original Hearing Panel or a newly composed Hearing Panel; or
- remand a case for a new or additional investigation, followed by an adjudication consistent with these Procedures, to either the original investigator or to a new investigator.

## **22 REQUEST FOR A STAY PENDING APPEAL**

The Review Panel may, but is not required to, stay a sanction where the appealing party demonstrates the need for a stay by a clear showing. An application for a stay must be submitted to the Director. The Director will provide a copy of the stay application to the Review Panel and the other party, who is entitled to respond to the stay application by submitting to the Director a written response. The Review Panel will set a reasonable timeline for handling the stay application, including a deadline for the other party to respond to the stay application. The decision to issue a stay or not is not appealable. The Review Panel has discretion to reconsider its decision on a stay at any time during the appeal. The stay expires at the conclusion of the appeal.

## **23 CONSISTENCY OF INTERPRETATION**

Because the student conduct system utilizes the decision of the University Hearing and Review Panels to define or interpret violations, summaries of all decisions of those boards shall be kept on file in the OSCCS, including a brief description of the nature of the case and its disposition, but with names of individuals and other identifying information redacted.